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Supreme Court, U.S
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In The
Supreme Court of the United States

MARK D. LAY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

CORRECTED PETITION FOR REHEARING

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ARGUMENT

Reconsideration of the denial of certiorari is requested for the reason, the following key issues are not addressed in the denial: 1) the impact of trade confirmation slips; 2) the fact the Mr. Lay did not receive fees from the Ohio Bureau of Workers' Compensation for his investment adviser work on behalf of the Active Duration Fund (ADF); and 3) Mr. Lay did not realize gain from the alleged misconduct that formed the basis for his prosecution.

As was correctly pointed out in the dissent in the appellate court opinion in this action, in order to sustain a mail fraud conviction against Mr. Lay, the government was required to show proof of interstate mailing "in furtherance of the [alleged] scheme to defraud[.]" United States v. Prince, 214 F. 3d 740, 748 (6th Cir. 2000); see also, 18 U.S.C. §1341 (a mailing must be "for the purpose of executing such scheme or artifice" to defraud).

Here the charged mailings are "trade confirmation slips." The government did not contend and the evidence did not show that the slips themselves contained any misrepresentations or that they played any role whatever in parting the Ohio Bureau of Workers Compensation (OBWC) from its

money. Instead, the slips simply confirmed trades that Mr. Lay made on the open market.

The dissent correctly points out that the Governments' explanation of this point is amorphous at best. Post-fraud mailings, such as trade confirmations, can further a scheme if designed to lull the victims into a false sense of security, postpone their ultimate complaint to the authorities, and therefore make the apprehension of the defendants less likely than if no mailings had taken place. United States v. Lane, 474 U.S. 438, 451 (1986). Here, there was no proof to support such a theory. In Mr. Lay's case, all of the trades were done correctly, which the government did not contest. The government alleged that the trade confirmations were used in a scheme to over leverage the Active Duration Hedge Fund (ADF). The evidence at trial however did not show how any of the trades accomplished over leveraging. The fact is many trades reduced leverage, and many trades were profitable. The government never distinguished this fact. The evidence did not address individual trades or the dates of the trades. Without showing the daily position of the fund and any losses generated by the trades, the confirmation slips in and of themselves did not advance the government's case.

The trade confirmation statements did not contain false information. In cases where mailing trade confirmation statements constituted a violation of 18 U.S.C. §1341, the statements were transmitted for the purposes of executing the artifice of scheme. See, United States v. Marando, 504 F.2d 126(2d Cir. 1974) where trade confirmation slips were mailed and determined to be an integral part of a scheme to obtain property; also see, United States v. Grossman, 843 F. 2d 78 (2d Cir. 1988) where it was determined that:

> The mailings of the confirmation slips did further the purpose of executing the scheme. The confirmation slips (1) notified the relatives that the purchase or sale actually had been completed; (2) provided an on-going tally of purchases, allowing the relatives to cover each other's positions; (3) concealed the fraud by maintaining an appearance of normality, see, United States v. Cohen, 518 F.2d 727, 737 (2 Cir), cert denied, 423 U.S. 926, 46 L. Ed. 2d 252 (1975): and (4) allowed the relatives to demonstrate ownership after the recapitalization announcement. Pereira v. United States, 346 U.S. 1, 98 L. Ed. 435, 74 S. Ct. 358 (1954). [**27].

To establish a violation of the mail fraud statute, "the mailing must be for the purposes of executing the scheme." United States v. Maze, 414 U.S. 395 (1974). To state an offense under 18 U.S.C. §1341 this Court determined in Cleveland v. United States, 531 U.S. 12 (2000) that the evidence must show that the defendant not only devised scheme or artifice, but also used that scheme or artifice to obtain money or property. See, United States v. Males, 459 F. 3d 154 (2d Cir. 2006) (Emphasis added). Here the evidence showed ADF received its first $100,000,000.00 before Mr. Lay ever executed a trade. There was no evidence that the mail was used to obtain money or property. There was no evidence that property or money was obtained through a scheme that involved the use of the mail. The trade confirmation slips here unlike those in Grossman or Mirando did not contain false information, did not document illegal insider trades, and were not transmitted to obtain money or property. The alleged nondisclosures and misrepresentations concerning leverage alleged by the government were not related to the mailing of confirmation slips. The trades reflected on the listed slips were lawful trades for a hedge fund. It does not matter that OBWC did not authorize them, the relevant private placement

memorandum gave ADF's board sole discretion to deviate from the fund's leverage guideline, not OBWC. The trade confirmation statements report the purchases of securities on a certain date, from a certain broker, at a certain price. All of that information was true, in every instance. On these facts a violation of 18 U.S.C. §1341 was not established.

Here OBWC invested funds in ADF on three discrete dates, August 20, 2003, May 21, 2004 and September 23, 2004. These are the only times OBWC "parted" with property.

> The mail fraud statute prohibits the use of the mails by any person "having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises..." 18 U.S.C. §1341. "Mail fraud consists of (1) a scheme or artifice to defraud; (2) use of mails in furtherance of the scheme; and (3) intent to deprive the victim of money or property." United States v. Turner, 465 F.3d 667, 680 (6th Cir. 2006). Materiality of falsehood is a requisite element of mail fraud. Neder v. United States, 527 U.S. 1, 25, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999). The misrepresentation "must have

> the purpose of inducing [*7] the victim of fraud to part with the property or undertake some action that he would not otherwise do absent the misrepresentation or omission." United States v. Daniel, 329, F.3d 480, 487 (6th Cir. 2003). A misrepresentation "is material if it has a natural tendency to influence, or is capable of influencing, the decision of the decision-making body to which it was addressed." Neder, 527 U.S. at 16 (internal citation and quotation marks omitted).

McCauliff, supra.

There was no proof here that OBWC parted with property by reason of a material misrepresentation in a trade confirmation slip.

> The mail fraud statute "does not purport to reach all frauds, but only those limited instance in which the use of the mails is part of the execution of the fraud." Kann v. United States, 323 U.S. 88, 95, 89 L. Ed. 88, 65 S. Ct. 148 (1944). Accordingly, the government must show beyond a reasonable doubt that [defendant] caused the mailings listed in the indictment to be sent and that the mailings were in furtherance of the fraud.

United States v. Pimental, 236 F. Supp. 2d 99 (D.C. Mass 2002).

Here there was no proof of any mailings in further of a scheme to exceed leverage or that the OBWC parted with money due to mailing trade confirmation slips.

On June 24, 2010, the United States Supreme Court in Skilling v. United States, 561 U.S. _____ (2010), 130 S. ct. 2896 2010 U.S. LEXIS 5259 (June 24, 2010) announced a seismic shift in mail fraud prosecutions. The appellate court totally ignored the Skilling opinion. The Skilling opinion highlights what the government's burden of proof is in a prosecution under 28 U.S.C. §1341for mail fraud. Skilling makes is clear that an essential element is a mail fraud prosecution is evidence of some form of gain or enrichment to the defendant. Skilling states:

> Enacted in 1872, the original mail-fraud provision, the predecessor of the modern-day mail and wire fraud laws, proscribed, without further elaboration, use of the mails to advance 'any scheme or artifice to defraud.' See, McNally v. United States, 483 U.S. 350, 356 (1987). In 1909, Congress amended the statute to prohibit, as it does today, 'any scheme or artifice to

> defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises §1341 (emphasis added); see id. at 357-358. Emphasizing Congress disjunctive phrasing the Courts of Appeals, one after the other, interpreted the term "scheme or artifice to defraud" to include deprivations not only of money or property but also of intangible rights.

Id. at *80-81 (emphasis added).

Skilling goes on to discuss the elements of an honest service fraud claim versus other frauds. In Skilling the Court pointed out the requirement for symmetry in a standard mail fraud case, that is the victim's loss of money or property supplied the defendant's gain with one the mirror image of the other. Id. at *82.

In this case it is undisputed that Mr. Lay did not realize any gain as a result of an alleged misuse of the mails. The OBWC's losses were due to unsuccessful attempts by Mr. Lay to recoup losses through increased use of leverage. In some instances gains resulted from the use of increased leverage. In other instances losses occurred from its use. In no

instance, however, did Mr. Lay realize any money or property from the use of allegedly excessive leverage.

Likewise, Mr. Lay has received no compensation from OBWC by reason of trading activity or volume. All of Mr. Lay's fees were paid by the ADF, not the OBWC. Mr. Lay received no compensation from OBWC for ADF trades. The absence of any gain of any nature by the Defendant is also fatal to a mail fraud prosecution. Skilling emphasizes this point.

Skilling determined that a 28 U.S.C. §1346 prosecution requires as "offense conduct" evidence of either bribery or kickbacks and that the "ambit of criminal statutes should be resolved in favor of lenity." Id. at 100 (quoting Rewis v. United States, 401 U.S. 808, 812 (1971)). The "offense conduct" in Mr. Lay's case which was a 28 U.S.C. §1341 prosecution according to Skilling, must include an element of gain at the expense of a victim, here OBWC.

In this case the gain element is totally lacking. The District Court stated in of Mr. Lay's sentencing memorandum:

> Looking back in hindsight, as the Court can do, it seems obvious that he should have stopped following the investment strategy he had in place. But at the time,

no one had ever seen an instance in which rising bond process would not lead to a devaluation of existing bonds. But that is precisely what happened in this time frame. It was the first time in economic history of the United States that that occurred, and his strategy failed and because of the leverage, failed dramatically.

***

It seems apparent that the defendant had not lost any monies for any clients in the management of the MDL investments until the defendant began excessive over-leveraging with the ADF. It appears from his past experiences with Mellon Bank and PNC the it was not the first time defendant took great risks in the belief that he could recoup his losses. The Court notes that the defendant, born in 1963, actively pursued a good education and did not demonstrate criminal tendencies. The defendant has no criminal record. The defendant appears to have been a responsible father. <u>It does not appear to the Court that the defendant was motivated to gain more income by his management of the ADF</u>.

(Trial Court Doc. #181 p. 23) (emphasis added).

As the District Court indicated, there was no evidence whatsoever that the mails were used by Mr. Lay in any scheme to defraud another or to generate gain for Mr. Lay. Skilling makes it clear the absence of this element is fatal to a mail fraud prosecution. The mailing of trade confirmation slips by third parties that document specific transactions did not result in any gain or benefit to Mr. Lay.

Rehearing should also be granted for the reason the Opinion of the Court of Appeals fails to address the ongoing regulatory measures being taken by the Securities and Exchange Commission to clarify duties owed by investment advisers to private funds, such as the Active Duration Fund here.[1] All of the

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[1]The SEC has now proposed rules to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding investment advisers to private funds, such as hedge funds and private equity funds. The proposals would:

- Establish reporting requirements for private fund advisers that will be required by the Dodd-Frank Act to register under the Investment Advisers Act of 1940 and more limited reporting requirements for certain private fund advisers that will continue to be exempted from registration under the Advisers Act;
- Increase the scope of disclosure required of all registered investment advisers of Form

operative agreements that governed ADF, Petitioner's relationship to OBWC, and the limitation imposed by these agreements, including the restrictions of hedge fund investments to qualified or sophisticated investors, have been ignored.

Petitioner here received no compensation from the Ohio Bureau of Workers Compensation (OBWC) for services as the ADF Investment Adviser. The

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ADV;

- Clarify the exemptions from Advisers Act registration available to advisers to venture capital funds and private funds with less than $150 million in assets under management in the United States, and foreign private advisers; and
- Clarify the parameters of the prohibition from SEC registration applicable to "mid-sized" investment advisers with between $25 million and $100 million in assets under management.

Proposed Rule: Rules Implementing Amendments to the Investment Advisers Act of 1940, Release No. IA-3110 (November 19, 2010), available at http://sec.gov/rules/proposed/201/ia-3110.pdf (the "implementing release"); and Proposed Rule: Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers, Release No. IA-3111 (November 19, 2010), available at http://www.sec.gov/rules/proposed/2010/ia-3111.pdf (the "exemptions release").
(See, Sullivan & Cromwell, LLP, November 24, 2010 Newsletter)

express terms of the governing agreements, i.e. the PPM and investment adviser agreement ADF refute this. Furthermore, there was no evidence whatsoever in the form of checks or transfers of any nature to establish that any fees paid to Petitioner were paid by OBWC, all fees having instead been paid, in accordance with the ADF Private Placement Memorandum by the Fund Administrator, Olympia Capital.

The novel issues in this case support the need for further review. There is no other case known to Petitioner where it has been determined that a hedge fund investor may also be a hedge fund client.

As has been stated, the SEC Hedge Fund rule concerning who is a hedge fund client was overturned by the United States Court of Appeals for the District of Columbia Circuit in the appellate case of Goldstein v. SEC, 451, F.3d 873 (D.C. Cir. 2006). The Court states:

> "An investor in a private fund may benefit from the adviser's advice (or he may suffer from it) but he does not receive the advice directly. He invests a portion of his assets in the fund. The fund manager - the adviser - controls the disposition of the pool of capital in the fund. The adviser does not tell the investor how to spend his money;

> the investor made that decision when he invested in the fund. Having bought into the fund, the investor fades into the background; his role is completely passive. If the person or entity controlling the fund is not an "investment adviser" to each individual investor, the a fortiori each investor cannot be a "Client" of that person or entity."

Under Goldstein it is clear that investment advisers do not owe fiduciary duties to hedge fund investors for the reason the investors are not the advisers' clients and as such observing fiduciary duties to the investor instead of the fund would pose inevitably conflicts of interests.

In point of fact, Goldstein states:

> At best it is counterintuitive to characterize the investors in a hedge fund as the "clients" of the adviser. *See Am. Bar Ass'n v. FTC, c 368 U.S. App. D.C. 368, 430 F.3d 457, 471 (D.C. Cir. 2005).* The adviser owes fiduciary duties only to the fund, not to the fund's investors. Section 206 of the Advisers Act *15 U.S.C. §80b-6*, makes it unlawful for any investment adviser - registered or not - "to engage in any transaction, practice, or course of business

which operates as a fraud or deceit upon any client or prospective client." *Id. §80b-6(2). In SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 84 S. Ct. 275, 11 L. Ed 2d 237 (1963),* [**24] the Supreme Court held that this provision created a fiduciary duty of loyalty between an adviser and his client. *See, id. at 191-92; id at 201.* ("The statute, in recognition of the adviser's fiduciary relationship to his clients, requires that his advice be disinterested."); *see also Hedge Fund Rule, 69 Fed. Reg. at 72,059 & n.57.* In that case, the duty of loyalty "requires advisers to manage their clients' portfolios in the best interest of clients," and imposes obligations to "fully disclose any material conflicts the adviser has with its clients, to seek best execution for client transactions, and to have a reasonable basis for client recommendations.

If the investors are owed a fiduciary duty and the entity is also owed a fiduciary duty, then the advisor will inevitably face conflicts of interest. Consider an investment adviser to a hedge fund that is about to go bankrupt. His advice to an investor in the fund, however, would likely include any and all measures to remain solvent. [**25] His advice to an investor in the fund, however, would likely be to sell.

> For the same reason, we do not ordinarily deem them the shareholders in a corporation the "clients" of the corporation's lawyer or accountants. *See RESTATEMENT, supra §96 cmt. B* ("By representing the organization, a lawyer does not thereby also form a client-lawyer relationship with all or any individuals...who have an ownership or other beneficial interest in it, such as its shareholders"). While the shareholders may benefit from the professionals' counsel indirectly, their individual interest easily can be drawn into conflict with the interest of the entity. It simply cannot be the case that investment advisers are the servants of two masters in this way.

Id. (Emphasis added.)

Contrary to the Appellate Court statement, Goldstein did not leave the issue of whether an investment adviser may simultaneously serve the client and the investor open. Goldstein explicitly eliminated that possibility.

In May of 2002, MDL founded the exempt ADF Hedge Fund in Bermuda. **Due to the nature of this investment vehicle and the rules and regulations related hereto, the ADF Hedge Fund was required to be established pursuant to a completely separate**

and distinct business relationship between MDL and the Bureau that was not connected to and in way dependent upon the pre-existing relationship with the Bureau. (Emphasis added). The ADF Hedge Fund consisted primarily of government, corporate, and mortgage-backed securities.

It is common knowledge now and at the time this fund was created that a hedge fund is a high risk investment vehicle. Concomitant with the potential for high gains is the risk of substantial losses, including the total loss of the investment. (PPM, p. 24). It is for this reason that a different set of rules and regulations apply to hedge funds. These rules and risks were fully described and outlined in the PPM, the documentation that governed the subject ADF Hedge Fund and that delineated the terms of the agreement between the Bureau, the ADF Hedge Fund, MDL and Mark Lay. By entering into the agreement, the Bureau accepted these terms and these risks. Pursuant to the agreement, the Bureau chose to accept the lack of fiduciary relationship and the risks and potential for a total loss of its investment due to unforeseen volatility of the market.

Several specific examples of this exist in the PPM. At the outset of the PPM, it is stated, in all capital letters:

> PROSPECTIVE SUBSCRIBERS IN THE FUND SHOULD INFORM THEMSELVES AS TO THE LEGAL REQUIREMENTS AND TAX CONSEQUENCES WITHIN THE COUNTRIES OF THEIR RESIDENCE AND DOMICILE FOR THE ACQUISITION, HOLDING OR DISPOSAL OF SHARES AND ANY FOREIGN EXCHANGE REGISTRATIONS WHICH MAY BE RELEVANT TO THEM. IF YOU ARE IN ANY DOUBT ABOUT THE CONTENTS OF THIS MEMORANDUM, YOU SHOULD CONSULT YOUR STOCKBROKER, SOLICITOR, ACCOUNTANT OR OTHER FINANCIAL ADVISER.

(PPM, p. ii).

The following excerpts from the PPM totally refute the claim that OBWC paid Petitioner's fee for work on ADF:

> **FEES AND EXPENSES**
>
> <u>Organization and Offering Expenses</u>
>
> The aggregate initial organization and offering expenses will be advanced by the

Investment Adviser and will be reimbursed by the Fund at such times and in such amounts as requested by the Investment Adviser. Provided that the Fund commences investing activities, the Fund may treat its organizational costs and expenses in accordance with U.S. Generally Accepted Accounting Principles, although it may elect to modify its treatment of such costs and expenses to accommodate its practical needs, including without limitation, by amortizing such organizational costs and expenses over a period of up to 60 months. Subsequent offering expenses will be direct expense of the Fund.

Investment Adviser Compensation

The Investment Adviser will receive a quarterly management fee determined at a rate equal to 1% per annum of the Fund's Net Asset Value, accrued monthly and payable in arrears as of the end of each calendar quarter. It also will receive a quarterly inventive fee (the "Incentive Fee") equal, in the aggregate, to 20% of the

increase in Net Asset Value of each series of Shares over the sum of (i) the Series' Net Asset Value as of the commencement of each calendar quarter plus (ii) the yield on the Fund's portfolio at a rate equal to the yield of the Lehman Government Credit Index for such period (the "Hurdle"). A series of Shares will only be charged with an Incentive Fee if its Net Asset Value at the end of a quarter (prior to accrued Incentive Fees), if any, for the quarter is greater that (i) its Net Asset Value at the time of its initial subscription (or the Initial Closing Date, whichever is later) or (ii) its Net Asset Value at the time the last Incentive Fee was charged against such Series, whichever is higher, plus the Hurdle (the "High Water Mark"). In the event that the Fund invests in the Master Fund, the Investment Adviser will not be entitled to a separate management or investment advisory fee as manager of the Master Fund but will be entitled to reimbursement for expenses incurred on behalf of the Master Fund.

In order to ensure that the Incentive Fee is charged only to Shares that have appreciated in value their acquisition and to make sure that all Shares have the same Net Asset Value, the Fund will issue different series of Shares to investors who invest at different times to ensure that the Incentive Fee is charged only to Shares that have appreciated in value. See "CHARGES TO THE FUND - Calculation of Investment Adviser Compensation."

Calculation of Investment Adviser Compensation

The management fee is accrued monthly in arrears and paid as of the end of each calendar quarter.

The Fund also will pay a quarterly Incentive Fee to the Investment Adviser equal to 20% of "Net Profit" with respect to each series of Shares. See "SERIES OF SHARES" below. "Net Profit" is defined as the excess of the Net Asset Value of a Series as of the end of the quarter (after deduction of the Management Fee accrued

for the quarter but excluding any deduction for Incentive Fees accrued on each Series) less the sum of (i) the Net Asset Value of the Series as of the first day of the quarter plus (ii) the amount of interest which would have been earned during the quarter if the Fund's net assets had been invested at a rate equal to the yield on the Lehman Government Credit Index for the quarter (the "Hurdle") adjusted to reflect subscription and redemptions with respect to such period.

Incentive Fees are based only on the portion of the appreciation in the Net Asset Value of a Series of Shares during a quarter that constitutes an increase in its Net Asset Value in excess of the sum of the cumulative Hurdle and its highest Net Asset Value as of the end of any prior quarter or, for the quarter the Series are redeemed at any time other than the end of a quarter, the date of redemption will be treated as such shares. The amount of any Incentive Fee accrued with respect to the redeemed Shares will be payable to the

Investment Adviser, notwithstanding that following the redemption, the Net Asset Value of the relevant Series of Shares decreases.

The Investment Adviser may, in its sole discretion, waive all or part of its Incentive Fee otherwise due with respect to any Shareholder's investment by rebate of the waived fees to such Shareholders. The Investment Adviser may also, in its sole discretion, elect prior to the commencement of the Fund's trading activities and prior to the commencement of each calendar year thereafter, to defer for a period of up to ten years all of any portion of the Management Fee or Incentive Fee to be earned with respect to such period. In the event of such deferral, the deferred amount will appreciate or depreciate, at the election of the Investment Adviser, based on either (1) the Fund's performance (before Management or Incentive Fees) or (2) the performance of any other investment chosen by the Investment Advisor prior to the commencement of the deferral period.

> The deferred fees will be reflected on the books of the Company as a liability and will reduce the Fund's Net Asset Value.

The language in the PPM makes it clear the Petition's fees were paid by Olympia Capital as Administrator for ADF, not OBWC. It also makes clear that whoever paid the fees had to have intimate knowledge of ADF's performance. Accordingly, it is inconsistent to contend that OBWC paid the fees but was misled concerning ADF status. In other words, it is illogical to contend that OBWC paid Petitioner's fees, but was not aware of factors such as the daily net asset value of ADF, a critical component of fee calculation.

OBWC was a sophisticated investor. Participation in ADF was limited to sophisticated investor.

In point of fact the PPM states:

> <u>Eligible Subscribers</u>
> The Shares are offered only to Qualified Holders. Qualified Holders are "non-United States Persons" and U.S. tax-exempt investors who are "qualified eligible participants" under CFTC Regulation 4.7 and "qualified purchasers"

under Section 3(c)(7) of the Investment Company Act.

Aside from errors related to fees, status as a client, the lack of gain and fraudulent mailings, the District Court erroneously failed to issue a proper instruction as required by United States v. Smith, 419 F.3d 521, 529 (6th Cir. 2005). Therein, the Sixth circuit stated that it is an abuse of discretion to fail to give a proper cautionary instruction "'to guard against the dangers of undue emphasis and context.'" Id. (quoting, United States v. Tines, 70 F.3d 891, 897 (6th Cir. 1995)). Smith emphasized the need to instruct as to both components, to prevent the undue influence on the jury regarding the testimony and to prevent taking the testimony out of context of the circumstances of the original testimony. Id.

During the jury deliberations, the jury requested to see the transcript of Mark Lay's prior testimony. Prior to allowing the jury's request, and over Appellant's objections, Judge Dowd of the District Court stated that he was only giving half of the instruction required by the Smith case because he did not understand the second requirement to caution the jury to not take the testimony out of context. (Trial tr., Doc. #145, pp. 552-554, October 30, 2007).

In this case it is reversible error that the full instruction was not given because the testimony the jury requested and received included Mark Lay's testimony when he was erroneously asked to give a legal conclusion. He was not qualified to give a legal conclusion, and that was error as well. (Trial tr. Doc. #145, pp. 552-554, October 30, 2007).

Failing to exclude or give a limiting instruction as to Mark Lay's opinions as to legal conclusions regarding client and investor was prejudicial to Mark Lay's defense, in and of itself. This prejudice was compounded by the district court's refusal to give the proper limiting instruction. The testimony was taken out or context by the jury. The jury was not told that Mr. Lay testified in civil case involving totally different issues.

CONCLUSION

By reason of these errors, Reconsideration should be accorded to Mr. Lay.

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